

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CR-19-00370-PRW
	)	
EARL LYNN SEBREE,	)	
	)	
Defendant.	)	

**ORDER**

Presently, this case is set on the Court's December 2020 criminal jury trial docket.<sup>1</sup> But earlier today, the Chief Judge of the U.S. District Court for the Western District of Oklahoma entered General Order No. 20-26, suspending all criminal and civil jury trials for the month of December in light of the surge of new COVID-19 cases over the past few weeks.<sup>2</sup>

The COVID-19 pandemic continues to be a factor in the forty counties comprising the Western District of Oklahoma. As of Wednesday, November 20, 2020, the total number of confirmed cases of COVID-19 statewide is up to 167,261, the total number of COVID-19 related deaths statewide is 1,603, and the number of active cases statewide is 30,724.<sup>3</sup>

---

<sup>1</sup> December Criminal Trial Docket (Dkt. 43) at 1.

<sup>2</sup> In re Suspension of Jury Trials in Dec. 2020, G.O. No. 20-26, slip op. at 1 (W.D. Okla. Nov. 23, 2020).

<sup>3</sup> Okla. State Dep't Health, *Executive Order COVID-19 for Report November 20, 2020*,

Additionally, the Oklahoma State Department of Health (OSDH) has divided the State into eight hospital regions,<sup>4</sup> and as of November 20th, five hospital regions that cover all forty counties in the Western District of Oklahoma (i.e., Regions 1, 2, 3, 6, and 8) have been elevated to Tier 3 of the Department's Hospital Surge Plan because at least 20% of all hospitalizations in those regions have been related to COVID-19 for at least three consecutive days—a move that permits Governor Kevin Stitt to issue an executive order reducing elective procedures by 50% statewide in order to preserve hospital beds and medical personnel for COVID-19 patients.<sup>5</sup>

Moreover, the Centers for Disease Control and Prevention (CDC), the OSDH, and the Governor continue to recommend social distancing and to advise against large indoor gatherings. Concerning gatherings, the CDC advises that the risk of spreading COVID-19 increases when there are more people to interact with, longer interactions, and a higher

---

at 3, *available at* [https://coronavirus.health.ok.gov/sites/g/files/gmc786/f/eo\\_-\\_covid-19\\_report\\_-\\_11-20-201.pdf](https://coronavirus.health.ok.gov/sites/g/files/gmc786/f/eo_-_covid-19_report_-_11-20-201.pdf).

<sup>4</sup> See generally Okla. State Dep't of Health, *Third Revised Oklahoma COVID-19 Hospital Surge Plan* 4 (rev. Oct. 27, 2020) (showing the breakdown of the "Eight Preparedness Regions" by county), *available at* [https://coronavirus.health.ok.gov/sites/g/files/gmc786/f/final-3rd\\_revised\\_hospital\\_surge\\_plan\\_3.pdf](https://coronavirus.health.ok.gov/sites/g/files/gmc786/f/final-3rd_revised_hospital_surge_plan_3.pdf).

<sup>5</sup> *Id.* at 5 (defining Tier 3 as requiring "20-39% COVID patients in staffed beds) and indicating what interventions are permissible at Tier 3); Okla. State Dep't of Health, *Hospital Tiers Plus Detail for 11/20/2020*, *available at* [https://coronavirus.health.ok.gov/sites/g/files/gmc786/f/hospital\\_tiers\\_plus\\_detail\\_20201120.pdf](https://coronavirus.health.ok.gov/sites/g/files/gmc786/f/hospital_tiers_plus_detail_20201120.pdf) (showing data for hospitalized COVID-19 patients over the past two weeks in all eight hospital regions). Although the Governor has not yet issued an executive order limiting elective surgeries, it appears he is considering such a move if COVID-19 hospitalizations continue to climb. See, e.g., Carmen Forman, *State May Halt Elective Surgeries: Governor Refuses Again to Make Mask Mandate to Curb Spike in Cases*, *Oklahoman*, 1A, Nov. 19, 2020.

level of community transmission in the area where the gathering is held.<sup>6</sup> On November 16, 2020, the Governor issued the Seventh Amended Executive Order No. 2020-20, finding that a “health crisis still exists[] and still needs to be addressed in various ways by Executive Order,” declaring that all 77 counties of Oklahoma were still under an “emergency caused by the threat of COVID-19,” directing that individuals “follow CDC guidelines for social distancing and for gathering in groups” and that businesses adhere to the Oklahoma Department of Commerce’s Open Up and Recover Safely (OURS) Plan, and imposing new safety measures on restaurants, bars, and employees of the state executive branch.<sup>7</sup> The OURS Plan similarly advises citizens to “minimize time spent in crowded environments and [to] continue following CDC guidelines regarding social distancing” during Phase 3 of the Plan,<sup>8</sup> which the State entered on June 1st.<sup>9</sup>

The recent surge in COVID-19 cases and the continued social distancing requirements have led the judges of this district to conclude that jury trials cannot be conducted during the month of December without jeopardizing the health and wellness of

---

<sup>6</sup> CDC, Considerations for Events and Gatherings, <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html> (last visited Nov. 23, 2020).

<sup>7</sup> Okla. 7th Am. Exec. Order No. 2020-20, at 1, 5, 7, available at <https://www.sos.ok.gov/documents/executive/1971.pdf>.

<sup>8</sup> Okla. Dep’t Commerce, *Open Up and Recover Safely: A Three-phased Approach to Open Oklahoma’s Economy* 4 (rev. Aug. 3, 2020), available at <https://www.okcommerce.gov/wp-content/uploads/Open-Up-and-Recover-Safely-Plan.pdf>.

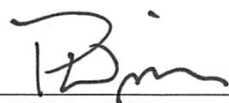
<sup>9</sup> Oklahoma Commerce, Open Up and Recover Safely (OURS) Plan, <https://www.okcommerce.gov/covid19/ours-plan/> (last visited Nov. 19, 2020).

jurors, parties, and court personnel alike. All these factors counsel in favor of continuing jury trials from the December 2020 trial docket to the January 2021 trial docket. These findings and the findings set forth in General Order No. 20-26, which are hereby incorporated by reference, lead the Court to conclude that the ends of justice served by entering this continuance outweigh the best interests of the public and the defendant to a speedy trial. Thus, the Court finds that the period of delay resulting from this continuance will be excluded under § 3161(h)(7) of the Speedy Trial Act.

**IT IS THEREFORE ORDERED** that this case shall be **STRICKEN** from the Court's December 2020 criminal jury trial docket, and **RESET** on the Court's January 2021 criminal jury trial docket.

**IT IS FURTHER ORDERED** that the parties' deadline for pretrial motions is extended to December 18, 2020, pursuant to Rule 12(c)(2) of the Federal Rules of Criminal Procedure, and any responses will be due within nine days after the pretrial motion is filed, in keeping with LCrR 12.1(b).

**IT IS SO ORDERED this 23rd day of November, 2020.**

  
\_\_\_\_\_  
PATRICK R. WYRICK  
UNITED STATES DISTRICT JUDGE